IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18-7-2006

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.21409 of 2006 and M.P.No.1

M. Dhandapani ... Petitioner

Vs.

1. The Deputy Inspector General of Police,
Armed Forces, Chenai (i/c) Trichy-12.

2. The Commandant,
TSP-IV, Kovaipudur,
Coimbatore - 42. ... Respondents

This writ petition has been filed under article 226 of Constitution of India, praying this Court to issue a writ of certiorarified mandamus calling for the records of the first respondent in his proceedings C.No.A2/APPEAL 47/2005 dated 9.12.2005 confirming the order of the second respondent in his Proceedings C.No.PR.7/E3/05 dated 21.10.2005 and quash the orders passed therein and direct the respondents to reinstate the petitioner with all consequential, monetary and other service benefits such as backwages, promotions, etc.

For Petitioner : Mr.I.C.Vasudevan

For Respondents : Mr.A.Arumugam,
Additional Government Pleader

O R D E R

Petitioner seeks to quash the order of termination dated 21.10.2005 passed by the second respondent and confirmed by the first respondent in his appeal order dated 9.12.2005 and to direct the respondents to reinstate the petitioner with all consequential, monetary and other service benefits such as backwages, promotions, etc.

2. The brief facts as stated in the writ petition are that the petitioner was appointed as constable in the second respondent battalion on 1.3.2002. The petitioner

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along with one Rajendran said to have committed theft of a cell phone and Rs.200/- from one Leninkumar of Dharapuram and his friend by name Prabu. The said Leninkumar gave a complaint before the Inspector of Police, Dharapuram against the petitioner and the same was registered against the petitioner and the said Rajendran under Section 379 IPC in Crime No.220 of 2005. Petitioner was placed under suspension and he was issued with a charge memo dated 2.4.2005. In the Criminal case, a charge sheet was filed before the Judicial Magistrate, Dharapuram.

3. Petitioner filed W.P.No.20689 of 2005 before this Court to stay the departmental proceeding and contended that in respect of the same set of allegations, a criminal prosecution is also pending. This Court admitted the writ petition and ordered notice. Since no stay was granted, the enquiry officer continued the enquiry. Alleging that the enquiry has not been conducted properly, petitioner filed another W.P.No.21828 of 2005 and prayed for change in Enquiry Officer. The said writ petition was also admitted, but no stay was granted.

4. According to the petitioner, the criminal case ended in acquittal and even after that the Enquiry Officer proceeded with the enquiry and examined seven witnesses on the side of the department and two witnesses on the side of the defence. The Enquiry Officer submitted his report holding that the charges against the petitioner were proved. Based on the Enquiry Officer's report, petitioner was dismissed from service. Against the said dismissal order, petitioner preferred appeal before the first respondent which was also dismissed. The said orders are challenged in this writ petition.

5. The charges framed against the petitioner M.Dhandapani, PC No.700, read as follows,

> "(i) The delinquent while availing Medical Leave from 09.03.05 robbed cell phone of one Lenin Kumar and Prabhu along with Rs.200/- at Dharapuram by pass road on the right side of Green Park hotel by telling them that he is a Police Constable, on 18.03.05 at 2115 Hrs.
>
> (ii) By involving himself in the above criminal act, a case in Dharapuram PS Cr.No.220/05 u/s 379 IPC., was registered and the delinquent was sent for remand, thereby he has brought bad

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name to the Police force.

(iii) Failed to inform his involvement in the above case to the superior Officers."

6. The main ground of attack in this writ petition made by the learned counsel for the petitioner is that the Criminal Court having acquitted the petitioner, the enquiry conducted thereafter for the same set of charges is illegal.

7. The second respondent in the impugned order of dismissal stated reasons for accepting the Enquiry Officer's report and stated that the acquittal in the criminal case has nothing to do with the departmental proceedings since strict proof is necessary in the criminal case and probability of commission of offence is sufficient to prove the charges in the departmental proceedings. Enqiury Officer has also stated about the misconduct, dilatory tactics and disobedience of petitioner during the enquiry in the minute as well as his refusal to sign the statement on 27.5.2005. The second respondent in his order of dismissal found as follows,

"The delinquent being a constable who has been assigned the duty of safe guarding the life and property of public has instead brought bad name to Police department by involvement in this criminal case in which he has robbed Cell Phone and Cash from two young students at night. Not only this, while committing this act he has specifically told them that he is a Policeman, so that they do not retaliate. Thus he has misused the name of Police while indulging in this criminal act. Such criminals, if allowed to continue in Police Department, can be a real threat to the life and property of public. Hence, such criminals should not be allowed to continue in service. Therefore I concur with the findings of the Enquiry Officer in holding the minute proved in all the 3 counts of the charge and I award him the punishment of "Dismissal from service from the date of this Order"."

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The appeal filed against this order by the petitioner was also dismissed by the first respondent.

8. The petitioner, who is a police constable, indulged in theft of cell phone and Rs.200/- from two college students, that too after informing them that he is a police constable. Due to the said incident, criminal case was registered against the petitioner under section 379 IPC in crime No.220 of 2005 and thus caused disrespect to the Police Department. Petitioner focused the acquittal in the criminal case for exoneration in the departmental proceeding. As rightly pointed out by the second respondent in the dismissal order, acquittal in the criminal case has nothing to do with the departmental proceeding where the probability of commission of offence is sufficient. The charges against the petitioner are not only involvement in crime No.220 of 2005 under section 379 IPC, but also inviting disrespect to the Police Department and not informing about his involvement in the said crime to the higher officials.

9. The Enquiry Officer conducted a detailed enquiry and gave a finding that the petitioner is guilty of the charges framed against him. The criminal Court acquitted the petitioner only on the ground that the witnesses 1 to 7 turned hostile. The petitioner, who is a police constable, instead of preventing commission of offence by the anti-social elements, has himself chosen to commit the offence, that too after disclosing that he was a policeman. Such a kind of attitude of the petitioner is rightly condemned by the second respondent and confirmed by the first respondent. Even though the criminal Court acquitted the petitioner, certainly he had invited disrespect to the Police department. I do not find any illegality or impropriety in the said orders.

10. In the result, I do not find any merit in the writ petition and the same is dismissed in limine. Connected miscellaneous petition is also dismissed.

vr

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Deputy Inspector General of Police,
   Armed Forces, Chenai (i/c) Trichy-12.

2. The Commandant, TSP-IV, Kovaipudur, Coimbatore - 42.

+ one cc to I.C. Vasudevan, Advocate sr no. 31596
+ one cc to the Government Pleader sr no. 29821

VC(CO)
NM(26.07.2006)

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